

Criminal Law News



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The Tottenham riots in August 2011

Sally Ramage

Trigger for the riot

It was not until after the riot in Tottenham that police apologised to Duggan's family for not treating them in a more respectful way after the police shot and killed their son. The circumstances surrounding the death of Mr Duggan are being investigated by the Independent Police Complaints Commission. The family of Duggan, shot dead by police on Thursday 6 August 2011, said that they were angered by the lack of information they received, and that their upset stoked tensions immediately before Saturday's riot in Tottenham, although they did not want the violence that erupted later. The Metropolitan police apologised to the family on Monday, having earlier said that once the Independent Police Complaints Commission ('IPCC')¹ takes over an investigation, they also take over the role of family support. This statement is not true.

IPCC

The IPCC said:

'IPCC investigators are currently liaising with scientists at the Forensic Science Service regarding analysis on ballistics. We would anticipate being in a position to share verified results within the next 24 hours.'

The IPCC confirmed that they met with Mark Duggan's family on Sunday 7 August 2011 and then learnt that the family's concerns were about lack of contact from the police in delivering news of his Mark Duggan's death to his parents. The IPCC said that they told Mark Duggan's family that this issue would become part of the IPCC's investigation. The IPCC confirmed that it is not their job to deliver news of someone's death. The Police Family Liaison should have promptly done this, as per clearly written guidelines now in place. The IPCC said:

'The IPCC awaits further forensic analysis to enable us to have a fuller and more comprehensive account of what shots were discharged, the sequence of events and what exactly happened. In the meantime we would request people are patient while we seek to find answers to the questions raised by this incident. An inquest will open at High Barnet Coroner's Court on Tuesday 9 August.'

The police killed Mark Duggan

The police, ie. armed police from the specialist firearms unit C019, shot and killed young Mark Duggan, a handsome young man with a family. Mark Duggan is a victim of an incident- ie a shooting dead by police. He is therefore a *victim* of a fatal police shooting and as such his family deserve the resources of the police family liaison team. Mark Duggan was a father, fiance, brother and son. The definition of '*family*' for the purposes of the police family liaison is given by the Association of Chief Police Officers ('ACPO') as: partners; parents; siblings; children; guardians and others who have a direct and close relationship with this 'victim of a fatal police shooting', unless of course he was not a victim of a fatal police shooting but was targeted for 'death by shooting by the police'.

Family liaison officers' service not given to the Duggans

After the murder of a young black youth, Stephen Lawrence in April 1993, by a group of white youths in Eltham, South London, the public inquiry that followed highlighted weaknesses in the police investigation and

¹ The IPCC's job is supposed to make sure that complaints against the police in England and Wales are dealt with effectively. It sets standards for the way the police handle complaints and, when something has gone wrong, it helps the police learn lessons and improve the way it works.

the inquiry report in 1999 contained criticism of the police service and made recommendations and guidelines to drive race awareness education. The first recommendation was that a ministerial priority be established for all police forces in England and Wales ‘to increase trust and confidence in policing among minority ethnic communities’. *The training of family liaison officers must include training in racism awareness and cultural diversity so that families are treated appropriately, professionally, with respect, and according to their needs.* Clearly the Metropolitan police has failed to uphold this recommendation.

Firearm offences

What did Mr Duggan do for the police to shoot him dead on Thursday 8 August 2011? Allegedly he had a prohibited weapon which he used on police as they tried to arrest him. A prohibited weapon is defined under the Firearms Act 1968 section 5 and this definition covers not only powerful and potentially destructive firearms and their ammunition, but also small firearms. The test as to whether a weapon is prohibited is an objective test not affected by the intention of the firearm user. Where a firearm is capable of successively discharging two or more missiles *without* repeated pressure on the trigger, that weapon is ‘prohibited’. The precedent caselaw is *R v Law*.² Whilst a firearm certificate is needed in order to possess, buy or acquire firearms and ammunition, the authority of the Secretary of State is needed if the firearm or ammunition is a ‘prohibited weapon’. However, it is certainly not true that Mr Duggan had such prohibited weapons such as automatic weapons, self-loading weapons, any firearm with a barrel of less than 30 centimeters in length, a smooth-bore revolver, or a firearm that could discharge a noxious gas. The offence for possessing a ‘prohibited weapon’ is a strict liability offence. Mark Duggan’s family fervently believe that he possessed no firearms whatsoever.³ If Mark Duggan is proved to have had a firearm as the police who killed him allege, he could have been charged with the offence of using a firearm to resist arrest by the Firearms Act 1968, section 17(1)⁴ and this offence can carry life imprisonment and/or a fine on indictment and conviction. Another offence that Mr Duggan could have committed, did he have a firearm about him, is the offence of having a firearm or imitation firearm in a public place, an offence by the Firearms Act 1968, section 19⁵, carrying a maximum of seven years imprisonment and/or a fine on indictment.

Black youth disenfranchised

The area of Tottenham in London is a deprived area and Tottenham has a bad reputation for drugs, with very few prospects for jobs, although certainly not everyone behave like drug dealers and addicts. There is a huge sense of discontent and tension between the police and local youngsters. Local youth see police as acting with race discrimination tensions - often racial – and a sense of tension and injustice has been bubbling with the youth for a long time. They perceive the police as racists and as treating black youth in an inhuman way, using their ‘stop and search’ powers on every occasion and giving the perception that all black youth are criminals, especially when youth wear ‘hoodies’.

Police stood by and allowed the riot to proceed

Police have dismissed accusations that they stood by and watched people loot during the riots in Tottenham. Some 300 people gathered a peaceful demonstration outside Tottenham police station, but hours later, blazing buildings and cars turned the sky above the north London district red, and widespread looting occurred. On Sunday 7 August 2011, the disorder spread to other parts of the capital, including Brixton in the south and Walthamstow to the east. There were scores of people running down the street with TV sets, computers and laptops. People had TVs in trolleys and they littered the streets with electronic packaging. The looters ran riot but there were no police to be seen.

² [1999] Crim. L R 837.

³ However, according to the *Guardian* newspaper, their sources informed them that ‘Mark Duggan handgun tests show conversion into lethal weapon. Ballistics tests on weapon found with dead man in Tottenham indicate firearm had been changed to use live ammunition.’

⁴ Firearms Act 1968, s.217 states: ‘It is an offence for a person to make or attempt to make any use whatsoever of a firearm or imitation firearm with intent to resist or prevent the lawful arrest or detention of himself or another person.’

⁵ Firearms Act 1968, s.19 states: ‘A person commits an offence if, without lawful authority or reasonable excuse (the proof whereof lies on him) he has with him in a public place - a loaded shotgun. An air weapon (whether loaded or not), any other firearm (whether loaded or not) together with ammunition for use in the firearm, or an imitation firearm.’

Inquiry needed

Clearly a major investigation into this matter should have been triggered - one with an overarching investigation strategy to include the following strategies: house-to-house enquiries; forensic; CCTV; search; family liaison; media; communication within the police service; interview; elimination; identification and covert enquiries.⁶

Comments from responsible persons

Home Secretary Theresa May said that the police had put themselves in harm's way to protect Londoners. Deputy Prime Minister Nick Clegg said that the rioting was simply opportunistic theft. UKIP leader Nigel Farage was astonished to see pictures of looting whilst the police did nothing. Member of Parliament ('MP') Diane Abbot of neighbouring Hackney Borough said she that she was astonished and had marvelled at the fact that the looting had been allowed to carry on for hours. Tottenham MP David Lammy said that something went wrong in the policing. Others said they did not know how or why the violence had spread so quickly and questioned whether police had done enough to prevent the chaos that followed. One cannot but cynically wonder if the police are themselves using this incident to opportunistically make the point that they are understaffed and need more government money. A spokesman for the Metropolitan Police Authority said that there *are* contingency plans to deal with disorder, although this has not been evident here. The Metropolitan Police deputy assistant commissioner defended the police response and said the violence had quickly escalated. He said:

'The violence that erupted ended up with retail outlets being looted, with fires, with local businesses being attacked. We got as many officers there as quickly as we could, last night we got three times more officers out and tonight there will be more officers. This criminality - these people using an excuse to go and rob local businesses, to destroy local livelihoods - will not be tolerated.'

Former Scotland Yard commander Roy Ramm said that police had simply not expected the level of violence they saw following the initial protest - and there were not enough of them on the front line.⁷ He said:

'What happened on Saturday was that they were under-resourced and they didn't anticipate the levels of violence and vandalism. In a perfect situation you would have all the resources you need and had you had those resources on Saturday you would not have allowed looting and damage to property.'

Deputy assistant commissioner Stephen Kavanagh said on Monday 8 August 2011:

'I want to apologise to the Duggan family because I think both the Independent Police Complaints Commission ('IPCC') and the Metropolitan Police could have managed that family's needs more effectively.'

Conclusion

In light of the deliberate misleading statements by the Metropolitan Police about the death of Ian Tomlinson at the hands of a police officer at the G20 London meeting, it is wise to remember this similar fact evidence:

Ian Tomlinson's death was being investigated by City of London Police under the direction and control of the IPCC, and the circumstances portrayed in the video resulted not only in an independent investigation by the IPCC, but the widespread allegation that the police deliberately misled the public about the circumstances of the Ian Tomlinson's death. The IPCC launched an investigation in response to a complaint from the Tomlinson

⁶ See Office for Criminal Justice Reform, (2007) *Achieving best evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using Special Measures*, London: Office for Criminal Justice Reform.

⁷ However, by Monday evening August 8, the police said they had 1,400 police officers out in the riot area.

family about the *seriously misleading* press release put out by the MPS on the evening of 1 April 2009. Given the scale of public concern about alleged misinformation, wider terms of reference were set for the investigation to look at the period from 1 to 7 April 2009 and to establish the state of knowledge within the MPS and City of London Police about the level of contact Ian Tomlinson had with police prior to his death. At inquest, it was found that on 3 April 2009 some officers were aware of physical contact between police and Ian Tomlinson, *but this information was not passed on to the family, Coroner or IPCC.*

Anti-addiction drugs: cause for concern and uneasiness

Sally Ramage

Drug treatment for alcohol and drug addiction

The drug Naltrexone is prescribed for drug and alcohol addiction. Another drug is used to treat substance abusers who are addicted to heroin, this drug consisting of a mixture of drugs and is named Hapten. Hapten is mixed with Alum and is then used like a vaccine to provoke the addict's immune system to attack heroine molecules in a way similar to a drug, which attacks cancer cells. The Journal of Medicinal Chemistry and Nature Neuroscience both recently published findings of experiments using Hapten and Alum.

In 2004 the Journal of Medicinal Chemistry published a paper by Sylvie Bay, Valérie Huteau, Maria-Leticia Zarantonelli, René Pires, Joël Ughetto-Monfrin, Muhamed-Kheir Taha, Patrick England, and Pierre Lafaye, the designers of synthetic Hapten, comprising ChoP and part of its native carrier structure in *S. pneumoniae*, i.e. N-acetyl-d-galactosamine (GalNAc). Protein conjugates of this generic Hapten induced GalNAc–ChoP-specific antibodies, which recognized ChoP on both *S. pneumoniae* and *N. meningitidis*. This discovery led to the rational design of a novel multipurpose vaccine against respiratory infections. This vaccine was later found to be effective for curing drug addiction.

Bupropion or Zyban

Bupropion is another drug used for curing drug addicts. Bupropion is an effective medication in treating addiction and is widely used as an aid to smoking cessation. Bupropion inhibits striatal dopamine reuptake via dopamine transporter blockade, but it is unknown whether this leads to increased extracellular dopamine levels at clinical doses in man as opposed to rats.

Studies in rats

The effects of bupropion on extracellular dopamine levels in the striatum were investigated using [¹¹C]raclopride positron emission tomography (PET) imaging in rats administered saline, 11 or 25 mg/kg bupropion i.p. and in healthy human volunteers administered either placebo or 150 mg bupropion (Zyban® Sustained-Release). A cognitive task was used to stimulate dopamine release in the human study. In rats, bupropion significantly decreased [¹¹C]raclopride specific binding in the striatum, consistent with increases in extracellular dopamine concentrations. In man, no significant decreases in striatal [¹¹C]raclopride specific binding were observed. Levels of dopamine transporter occupancy in the rat at 11 and 25 mg/kg bupropion i.p. were higher than predicted to occur in man at the dose used. Thus, these data indicate that, at the low levels of dopamine transporter occupancy achieved in man at clinical doses, bupropion does not increase extracellular dopamine levels. These findings have important implications for understanding the mechanism of action underlying bupropions' therapeutic efficacy and for the development of novel treatments for addiction and depression.

Warning and conclusion: the complexity of drug misuse

Although the experiments carried out are by prestigious bodies, one must never forget that there are two arguments to every stance, according to Leonard Jason Lloyd, who reminded me that there are many reasons why addicts die, one being due to the 'lack of purity' of street heroin, resulting in addicts taking much larger amounts to gain the desired affect. However, when in recent months, higher strength heroin suddenly appeared; many addicts, being unaware of its quality, have taken their usual larger quantities with disastrous consequences. This illustrates well, the complexity associated with drug misuse. Yet one must question the ethics of prescribing drugs which, if used, can make addicts take larger doses to get the desired effect and thus kill themselves.

UK heritage crime panel mooted

Sally Ramage

Heritage crime

Heritage crime should be addressed by a special summit of experts, Environment Minister Alex Attwood said on 31 July 2011, after reports were published that a listed building (built in 1835) in Northern Ireland suffered from an arson attack. The building is 'Herdsman Mills' in County Tyrone. The arson attack has caused concern to the government and a 'heritage crime summit', held in August 2011. The participants were the relevant statutory and emergency agencies.

Relevant statutory and emergency agencies

The agenda was the security of the UK's built heritage. Secondly is the effect that such arsons will have on UK tourism industry.

The law

Such arson is a criminal offence under Criminal Damage Act 1971, ss. 1-3, of which the only offences triable on indictment under the Criminal Damage Act 1971, are the aggravated offences contrary to section 1(2) and(3). According to s.1, Criminal Damage Act 1971, s.1(1), a person, who, without lawful excuse, destroys or damages any property belonging to another, intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged, is guilty of an offence. In *R v. Cakmak*⁸ where the offence in question was a s.2 offence, the offence is only committed if the defendant made a threat to another with the intention to carry this through (rather than just a 'blag'). On 20 December 2000, a group of protestors demonstrating against human rights abuses in Turkey, including the appellants, occupied pods 4 and 24 of the London Eye.

There was no dispute that the appellant, Cakmak, used the intercom to contact the operator of the wheel, Robert Burt, who was in the control room. He threatened that the protestors would set fire to themselves if any attempt was made to storm the pods and told Mr Burt that the intention of the protestors was to speak to the media. Some of the protestors were seen by Mr Burt and others to pour some liquid over themselves. The appellants

were charged with threatening criminal damage contrary to s. 2(a) of the 1971 Act. The particulars were: 'that on December 20, 2000, without lawful excuse, they threatened Robert Burt that they would start fires inside capsules 4 and 24 of the London Eye belonging to British Airways, intending that Robert Burt would fear that the said threat would be carried out'. The appellants were convicted and on appeal submitted, among other things, that the judge had misdirected the jury as to the ingredients of the offence under s. 2(a). Although an offence under s.1 of the 1971 Act could be committed where it was established that a defendant was reckless as to whether his acts would destroy or damage the property that was in fact destroyed or damaged, there was no reference to recklessness in s. 2.

A question of fact

Whether such a threat is a real threat is question of fact. By s.3, 'a person who has anything in his custody or under his control intending without lawful excuse to use it or cause or permit another to use it to destroy or damage any property belonging to some other person; or to destroy or damage his own or the user's property in a way which he knows is likely to endanger the life of some other person' is guilty of an arson offence.

Intention- a crucial element of the offence

Possessing articles with intent to destroy or damage property, contrary to section 3 of the Criminal Damage Act 1971. The intention is a crucial element of the offence and only where the defendant intends to use, or cause or permit another to use, the thing to destroy or damage property, is the offence committed. If charged and convicted, the punishment is ten years imprisonment. To date, there are no sentencing guidelines for this offence. Mere *realisation* that the object in his possession could cause criminal damage is not enough; he must have the necessary intent to cause criminal damage. In the case of *R v Buckingham*⁹ it was held that the intent to use the thing to cause damage if necessary is the necessary intent to cause criminal damage under s.3 of the Criminal Damage Act 1971. By the Magistrates' Court Act 1980, s.22 and Schedule 2, a summary trial must take place where a person is charged with an offence contrary to section 1(1) (other than an offence charged as arson); or with aiding, abetting, counseling or procuring such an offence; or with attempting to commit such an offence; or with inciting, such an offence, provided that the value involved is less than £5,000.

Circumstances leading to summary trial

The case of *R v. Bristol Magistrates' Court, ex parte E* is an example of the circumstances that must lead to a summary trial. However, the burning down of a listed building is not a trivial matter and cannot be tried summarily because the financial amount of such damage is, by virtue of the nature of the building, not a small amount of money. But if such small value offences occurred in tandem, creating two or more offences of the same or a similar character, causing a total of more than £5,000 in value, then the case must be tried at the Crown Court, according to s. 22 of the 1980 Magistrates Act. Two or more of these offences can be grouped together to form one case under the Criminal Justice Act 1988, s. 40 (1) (3) and if convicted, the powers of the Crown Court are then limited to those of a magistrates' court. Many instances of this situation are reported and such cases include *R v. Alden*¹⁰.

Whether criminal damage offence a summary offence or triable

In *Alden*, it was held that the critical question was whether or not the criminal damage offence was a summary offence or an offence triable either way at the time that the crown court had dealt with the matter. This in turn depended on whether the decision in *Fennell* (supra) was correctly decided. Notwithstanding difficulties that had arisen out of the relevant statutory provisions, *Fennell*, which considered the effect of s.22 Magistrates' Court Act 1980, was correctly decided and the appeal was dismissed. Criminal damage was an either way offence, punishable on conviction, on indictment, with a maximum of ten years' imprisonment irrespective of the value of the damage caused. It was not necessary to allege the value of the damage in an indictment or to prove the value of the damage. Therefore, if a defendant appeared before the crown court charged with criminal damage other than under a provision specifically restricting its sentencing powers the maximum sentence

⁹ [2011] F.C.J. No. 616.

¹⁰ [2002] EWCA Crim 421. The decision of the Court of Appeal in *Fennell* [2000] 2 Cr App R 318 was approved. Criminal damage was an either way offence punishable on conviction, on indictment, with a maximum sentence of ten years' imprisonment irrespective of the value of the damage caused.

available was ten years. Alternatively, if a defendant appeared before a magistrates' court charged with criminal damage the court had to proceed under s.22 of the Act to determine the apparent value of the damage. If that value was less than £5,000 the magistrates had to proceed as though the offence was a summary one subject to the maximum sentence of three months' imprisonment.

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